IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

CRP.No. 368 of 1995()

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TLB.418/1977 of TALUK LAND BOARD, TALIPARAMBA

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PETITIONERS/REVN. PETITIONERS:

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1. THEVEROL PUTHEIYEDATH GOVINDAN NAMBIAR, MALAPATTAM AMSOM AND DESOM, TALIPARAMBA TALUK.

2. THEVAROL PUTHEIYEDATH RAYARAPPAN NAMBIAR, KUTTIATTOOR AMSOM AND DESOM, TALIPARAMBA TALUK.

3. KOLIYADATH OTHAYATH VEETTIL KARUNAKARAN NAMBIAR, MALAPPATTAM AMSOM AND DESOM, TALIPARAMBA TALUK.

4. KOLIYADATH OTHAYOTH VEETTIL JANAKI AMMA, CHEZHELI AMSOM AND DESOM, TALIPARAMBA TALUK.

5. ETTISSERI KUTTIAT VEETTIL SARADA AMMA, KODIYANGA AMSOM AND DESOM, TALIPARAMBA TALUK.

6. ETTISSERI KUTTIAT VEETTIL NARAYANAN NAMBIAR, KUNNATHOOR AMSOM AND DESOM, TALIPARAMBA TALUK.

7. ETTISSERI KUTTIA VEETTIL PADMAVATHI, KUNNATHOOR AMSOM AND DESOM, TALIPARAMBA TALUK.

8. ETTISSERI KUTTIAT VEETTIL KOMALA VALLI, CHUZHELI AMSOM AND DESOM, TALIPARAMBA TALUK

9. ETTISSERI KUTTIAT VEETTIL BHARGAVI, NEDIYANGA AMSOM AND DESOM, TALIPARAMBA TALUK.

10. KOLIYADATH OTHAYOTH VEETTIL LAKSHMI, MALAPATTAM AMSOM AND DESOM, TALIPARAMBA TALUK.

11. KOLIYADATH OTHAYOTH VEETTIL NARAYANAN, MALAPATTAM, AMSOM AND DESOM, TALIPARAMBA TALUK.

BY ADV. SRI.K.RAVINDRANATH
SRI.H.SIVARAMAN

RESPONDENTS/RESPONDENTS:

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1. THE TALUK LAND BOARD, TALIPARAMBA.

2. THE STATE OF KERALA, REP. BY THE CHIEF SECRETARY TO GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

3. THE DEPUTY COLLECTOR, KANNUR.

4. EDAVAN OTHAYOTH VEETTIL NARAYANAN NAMBIAR, S/O KUNHAMAN NAMBIAR, WARD NO.7, HOUSE NO.65, MALAPATTAM AMSOM, CHOOLIYATH DESOM, MALAPATTAM P.O.

BY GOVERNMENT PLEADER SRI. THOMAS JOHN AMBOOKEN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**K.T.SANKARAN, J**

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C.R.P. 368/1995

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Dated this the 10th day of December, 2007

**ORDER**

In 1977, suo motu proceedings were initiated before the Taluk Land Board, Thaliparamba, against Narayanan Nambiar as the assessee (fourth respondent in this revision). As per the final order dated 28.11.1981, Narayanan Nambiar was directed to surrender an extent of 33.84 acres. It would appear that subsequently several claim petitions were filed and some of them were rejected, while one claim petition was allowed as per the order dated 26.12.1992. Since that claim petition was allowed, the total extent to be surrendered was fixed at 28.20 acres. Meanwhile, possession of the property was taken on 21.2.1985.

2. The ceiling proceedings were initiated on the basis that the properties originally belonged to one Kunhamman Nambiar who acquired the property as per Marupat dated 2.9.1909. Kunhamman Nambiar died on 19.7.1935. He had four wives namely, (1) Kalyani Amma

(2) Cheriya Amma (3) Thambayi Amma and (4) Lekshmi Amma. The Taluk Land Board proceeded on the basis that Kunhamman Nambiar had executed a registered will numbered 5/1924 of Sub Registry Office, Irikkur, in favour of his wife Cheriya Amma and the assessee Narayanan Nambiar, who is the son born to Kunhamman Nambiar in Cheriya Amma. The authorised officer also reported that such a will was executed. Cheriya Amma pre-deceased Kunhamman Nambiar. The Taluk Land Board proceeded on the basis that as per Section 106 of Indian Succession Act, on the death of Cheriya Amma, the legacy did not lapse, but Narayanan Nambiar, got the full rights as per the will executed by Kunhamman Nambiar.

3. The revision petitioners herein subsequently filed claim petitions under Section 85(8) of the Kerala Land Reforms Act on 4.1.1993 contending that they have got 5/8 shares in the properties in question. According to them, on the death of Kunhamman Nambiar, the

property devolved on the petitioners and others and the petitioners were thus entitled to 5/8 shares. They also contended that they had instituted a suit before the Sub Court, Payyannur, as O.S. 116 of 1992 claiming partition. Narayanan Nambiar, the assessee in the case before the Taluk Land Board, was the first defendant in that suit. O.S.116 of 1992 was decreed on 26.11.1992. The claim petitioners (revision petitioners) contended that the decree of the civil Court is binding on the Taluk Land Board and, therefore, the extent of 5/8 shares held by them is liable to be executed from the account of the assessee. Since there was delay in filing the application under Section 85(8) of the Act, petitioners also prayed for condoning the delay.

4. The Taluk Land Board rejected the claim petition on the ground that the petitioners do not have any right in the properties. The Taluk Land Board held that as per the will executed by Kunhamman Nambiar in 1924, the properties devolved on the assessee Narayanan

Nambiar. The Suit was filed subsequent to the order dated 28.11.1981. The Taluk Land Board also held that the claimants have not produced any supporting documents to establish their claim. It was noticed by the Taluk Land Board that the suit was instituted in the year 1992, while the excess land was already taken possession of in the year 1985. It was held that the claim petitioners have failed to produce any documentary evidence to establish that they have got right over the land in question. The Taluk land Board also was not inclined to condone the delay in filing the application under Section 85(8) of the Act.

5. Learned counsel for the revision petitioners submitted that the decree of the civil Court is binding on the Taluk Land Board. The Petitioners were not parties before the Taluk Land Board and, therefore, they are not bound by the order dated 28.11.1981. They did not get any notice in the ceiling case and, therefore, they could not dispute the genuineness of the will allegedly

executed by Kunhamman Nambiar. It was also contended that the will was not proved in accordance with law. None of the attesting witnesses were examined nor any person, who is conversant with the signature of such attesting witnesses, was examined. Contention of the petitioners is that in the absence of proof of the will, and in the absence of notice to them, the Taluk Land Board was not justified in rejecting the application under Section 85(8) of the Act filed by them.

6. The argument of the learned counsel for the petitioners is attractive. The Taluk Land Board is bound by the decree passed by the Civil Court. But the order passed by the Taluk Land Board is dated 28.11.1981 whereas the suit was filed subsequently. Assessee Narayanan Nambiar was the first defendant in the suit. He did not contest the suit. Had he claimed rights under the will executed by Kunhamman Nambiar, certainly he would have contested the claim by the revision petitioners (plaintiffs in the suit) for 5/8

shares. Narayanan Nambiar did not do so. According to the learned Government Pleader, O.S.116 of 1992 is a collusive suit between the revision petitioners and the assessee Narayanan Nambiar. He contended that the ex parte decree obtained from the Civil Court by collusion cannot be put forward as a basis for the claim petition under Section 85(8). He submitted that the attempt of the claim petitioners in collusion with the assessee Narayanan Nambiar is to somehow get back the excess land which was already taken possession of on 21.2.1985.

7. It is true that there is no finding by the Taluk Land Board that O.S.116 of 1992 was filed collusively or that the decree was obtained by practicing collusion or fraud. But the necessary details are stated in the order passed by the Taluk Land Board which would indicate that the suit was filed subsequently, in order to defeat the ceiling provisions.

8. There is yet another circumstance which would go against the revision petitioners. The voluminous records were perused by me. Though it is not stated in the order passed by the Taluk Land Board and though it is not put forward as a contention on either side, it is clear from the records (Page 357 of the records) that one Kunhiraman Nambiar, son of Kunhamman Nambiar had filed O.S.169 of 1981 on the file of the Munsiff's Court, Thaliparamba, against the members of the branches of the four wives of Kunhamman Nambiar for partition. The plaintiff in that suit also relied on the will executed by Kunhamman Nambiar in 1924. The contention of the plaintiff therein was that on the death of Cheriya Amma, her rights under the will devolved on the rest of the members of the family and thereby the plaintiff therein would be entitled to a share. Narayanan Nambiar, the assessee herein, who was one of the defendants in O.S.169 of 1981, contended that he alone was entitled to the rights as per the will executed by Kunhamman

Nambiar in the year 1924. The Munsiff's Court accepted the contentions raised by Narayanan Nambiar (assessee herein) and held that the plaintiff in O.S.169 of 1981 was not entitled to any share in the properties. Though the judgment and decree in O.S.169 of 1981 was challenged in appeal as A.S.189 of 1983, District Court, Thalassery, at the instance of the plaintiff, the appeal was dismissed as per the judgment dated 19.11.1984. Since the decisions rendered by the Civil Court in O.S.169 of 1981 and A.S. 189 of 1983 are already on record before the Taluk Land Board, I am of the view that these documents also can be relied on to find out whether the claim put forward by the petitioners is genuine or not. From the judgment in O.S.169 of 1981, it is clear that even the son of Kunhamman Nambiar, claimed a share in the property and that was negatived by the Civil court in the year 1983. I wonder why the Taluk Land Board did not refer to these material documents.

9. On a perusal of the records, I am of the view that O.S.116 of 1992 is a collusive suit between the revision petitioners and the assesse Narayanan Nambiar to defeat the ceiling provisions. The decree obtained by them in such a manner in O.S.116 of 1992 cannot be put forward as a basis for the claim petition under Section 85 (8) of the Act in order to get back the property which was already taken possession of as per order dated 28.11.1981 passed by the Taluk Land Board. I am of the view that the claim put forward by the revision petitioners is bereft of bonafides and the Taluk Land Board was fully justified in rejecting their claim. No interference is called for in this revision petition and the same is accordingly dismissed. No order as to costs.

**K.T.SANKARAN**
**Judge**

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